United Nations A/C.6/63/SR.1

General Assembly
Sixty-third session

Official Records

Distr.: General
16 October 2008

Original: English

Sixth Committee

Summary record of the 1st meeting
Held at Headquarters, New York, on Monday, 6 October 2008, at 10 a.m.

Chairperson: Mr. Al Bayati ..... (Iraq)

Contents

Organization of work

Agenda item 129: Administration of justice at the United Nations

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

08-53618 (E)

The meeting was called to order at 10.05 a.m.

Organization of work (A/C.6/63/1 and A/C.6/63/L.1)

1. **The Chairperson** drew attention to the allocation of agenda items to the Committee, as contained in document A/C.6/63/1, and to the note by the Secretariat entitled "Organization of work" (A/C.6/63/L.1), in particular paragraphs 7 to 9 concerning the establishment of working groups. With regard to agenda item 129, "Administration of justice at the United Nations", he recalled that on 24 April 2008, the Ad Hoc Committee on the Administration of Justice at the United Nations had recommended that, at the sixty-third session of the General Assembly, the Sixth Committee should establish a working group with a view to finalizing its deliberations on the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and should continue its discussion of the other legal aspects of the administration of justice at the United Nations. It was his understanding that the Sixth Committee wished to establish a working group on administration of justice at the United Nations, chaired by Mr. Sivagurunathan (Malaysia), and that the working group, like the Ad Hoc Committee, would be open to all United Nations Member States and to members of specialized agencies or the International Atomic Energy Agency (IAEA), pursuant to General Assembly decision 62/519.

2. *It was so decided.*

3. **The Chairperson**, referring to agenda item 99, "Measures to eliminate international terrorism", said it was his understanding that the Committee wished, in accordance with the recommendation of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, to establish a working group, chaired by Mr. Perera (Sri Lanka), to continue the work of the Ad Hoc Committee and that the working group, like the Ad Hoc Committee, would be open to all United Nations Member States and to members of specialized agencies or IAEA, pursuant to General Assembly resolution 51/210.

4. *It was so decided.*

5. **The Chairperson**, referring to agenda item 73, "Criminal accountability of United Nations officials nd experts on mission", said it was his understanding that the Committee wished, in accordance with the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, to establish a working group, chaired by Ms. Telalian (Greece), to continue the work of the Ad Hoc Committee, and that the working group, like the Ad Hoc Committee, would be open to all United Nations Member States and to members of specialized agencies or the International Atomic Energy Agency, pursuant to General Assembly resolution 61/29.

6. *It was so decided.*

7. **The Chairperson** drew attention to the proposed timetable for the Committee's work, contained in paragraphs 3 to 6 of the note entitled "Organization of work" (A/C.6/63/L.1). In accordance with established practice, the proposed work programme would be applied with flexibility in light of the progress made by the Committee, which would take action on draft resolutions as soon as they were ready for adoption.

8. The Committee must allow sufficient time for preparation and consideration of the estimates of expenditure arising from draft resolutions. Since it was scheduled to conclude its work on 14 November 2008, all draft resolutions with financial implications must be submitted to the Fifth Committee by 31 October 2008, except for those relating to agenda items scheduled to be considered after that date. He took it that the Committee wished to proceed accordingly.

9. *It was so decided.*

10. **The Chairperson** stressed that the Committee was required to make full use of conference resources and facilities. Although, over the past three sessions, it had shown an improvement in that regard, during its most recent session it had lost over seven hours because of meetings starting late and ending early. Its conference service utilization factor would improve further if discussions began on time and if, in the event that the Committee was unable to proceed with discussion of an item, delegations were prepared to consider the next item on the agenda.

11. He took it that the Committee wished, as in the past, to follow the practice of the General Assembly in giving precedence on the list of speakers to representatives of regional groups or groups of States.

12. *It was so decided.*

13. In that connection, he drew attention to paragraph 13 of General Assembly resolution 59/313, which invited Member States that were aligned with statements already made by the chair of a group of

Member States, where possible, to focus additional interventions made in their national capacity on points that had not already been adequately addressed in the statements of the groups in question, bearing in mind the sovereign right of each Member State to express its national position.

Agenda item 129: Administration of justice at the United Nations (A/63/55 and Add.1, A/63/211, A/63/253, A/63/283 and A/63/314)

14. **Mr. Sivagurunathan** (Malaysia), Chairman of the Ad Hoc Committee on the Administration of Justice, introducing the report of the Ad Hoc Committee (A/63/55 and Add.1), said that during its discussions at United Nations Headquarters on 11, 14, 21 and 24 April 2008 , the working group of the whole of the Ad Hoc Committee had focused on the scope of the new system of administration of justice; legal assistance to staff; and the jurisdiction and powers of the Dispute Tribunal and the Appeals Tribunal. In addition, the text of the draft statutes of the Tribunals, as proposed by the Secretary-General in his note on the administration of justice (A/62/748 and Corr.1) had been discussed in informal consultations. Substantial progress had been made in consideration of the draft statutes, but agreement had yet to be reached on a number of issues. He was pleased that, as recommended by the Ad Hoc Committee, the Sixth Committee had decided to establish a working group to discuss the draft statutes and other legal aspects of the administration of justice at the United Nations.

15. **Mr. Alday** (Mexico), speaking on behalf of the Rio Group, said that the Organization's staff were its most valuable asset and that their rights must be protected in accordance with internationally accepted standards. The Rio Group would continue to support measures designed to ensure that the United Nations was an exemplary employer, in particular by replacing a system acknowledged to be slow, cumbersome and costly. To that end, delegations should agree as soon as possible on the draft statutes of the two Tribunals. Both management and staff were relying on the Committee's legal expertise so that the new system could be brought into operation by 1 January 2009 pursuant to General Assembly resolution 62/228. The necessary transitional measures should be determined in a timely manner, in coordination with the Fifth Committee, so as to enable the Sixth Committee to take up other issues, including disciplinary matters, the new investigation process proposed by the Secretary-General in his 2007 report on the administration of justice (A/62/294), the mandate of the Office of Staff Legal Assistance, the criteria for the removal of judges, and the terms of reference of the registries of the two Tribunals and of the Mediation Division.

16. **Ms. Orina** (Kenya), speaking on behalf of the Group of African States, said that the effective administration of justice was essential for the preservation of every individual's rights. The Organization must therefore put in place a new, impartial system of administration of justice accessible to all staff, irrespective of category or duty station and not bound by any ideology. While granting non-staff personnel access to the informal system was a noble objective, granting them access to the formal system required careful consideration. Those not granted such access should, however, be provided with adequate procedures for dispute settlement and effective alternative remedies. In that regard, the Group attached considerable importance to mediation, which merited inclusion in the new system. The appointment and removal of judges for both Tribunals should be reserved for the General Assembly in order to ensure transparency and preserve the judges' independence. She appealed for a spirit of compromise in order to ensure early completion of work on the draft statutes of the two Tribunals so that the new system could be in operation by January 2009.

17. **Mr. Sheeran** (New Zealand), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that United Nations staff should have access to a transparent, impartial, fair and efficient system of internal justice consistent with the rule of law and due process. He welcomed the progress made towards the establishment of a new system and the broad agreement that it should apply to all staff covered by the present one. Once the operation of the new system had been properly assessed, thought should be given to expanding its scope in light of the needs of those currently outside it.

18. In the interests of impartiality, it was important to establish a period during which judges serving on the Tribunals would be ineligible for subsequent appointment by the Secretary-General to judicial positions; however, in order to ensure a well-qualified pool of applicants, that period should be limited to three years. In view of the nearness of January 2009, the Committee, which was ideally placed to translate

the intentions of Member States into the legal language of draft statutes, needed to give final thought to the proposed texts so that the Fifth Committee could consider an adequate funding and staffing base, as well as transitional measures for the new system. The CANZ countries stood ready to work constructively to resolve all outstanding issues in a spirit of consensus.

19. **Mr. Blair** (Antigua and Barbuda), speaking on behalf of the Group of 77 and China, said that the United Nations system of administration of justice needed to be reformed in the interests of justice, impartiality and fairness. Outstanding issues, including scope of application, jurisdiction and transitional measures, must be finalized expeditiously in the coming two weeks so that the draft statutes could be duly forwarded to the Fifth Committee. The Group of 77 and China looked forward to consensus-building on the remaining issues in the shortest possible time.

20. **Mr. Renié** (France), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Iceland, Moldova and Ukraine, said that since the Organization had a decisive role in developing international standards in the field of human rights and the rule of law, it must have a legal system worthy of the name. The new system must be independent, transparent, professional, decentralized and adequately funded; it must also comply with international law, as well as the principles of the rule of law and the right to a fair trial. It was for the Committee to ensure that those requirements were met by seeing to it that the draft statutes of the new Tribunals contained all the necessary safeguards. The Fifth and Sixth Committees should work together on the new system since it would have a significant impact on the Organization's budget. In particular, transitional measures would be required; the Sixth Committee should offer guidance to the Fifth in that regard and, more generally, the two Committees should complement each other so as to achieve tangible results.

21. The European Union continued to be in favour of a two-step approach to the reform, first covering all those with access to the current system and, at a later stage, ensuring that the United Nations, as an exemplary employer, complied with its duty to provide effective legal remedies to all other categories of personnel. Other key issues to be addressed included strengthening legal assistance for staff and improving informal procedures in order to dispense with unnecessary litigation.

22. **Mr. Barriga** (Liechtenstein) said that while much work remained, the 1 January 2009 target for putting in place the new system of administration of justice was realistic if the Committee could finalize the work on the draft statutes swiftly, so that the Fifth Committee could deal with all remaining issues. The ultimate goal — the establishment of an independent, transparent, professional, adequately resourced and decentralized system of administration of justice — would improve staff moral and accountability, which in turn would enhance the effectiveness and efficiency of the Organization as a whole. Concerning the scope of the new system, he reiterated his Government's support for a sustainable solution that would not entail discrimination between staff performing similar tasks based on the nature of their contracts. The function of the new system should be assessed soon after its inception.

23. **Mr. Bichet** (Switzerland) said that any postponement of the deadline for putting in place the new system was unthinkable in view of the urgent need for the reform. As both a Member State and a host country to the United Nations, Switzerland attached the utmost importance to the earliest possible establishment of such a mechanism. The Committee must therefore step up its efforts to finalize the draft statutes of the new Tribunals in the coming weeks; it might be appropriate to assign to the Fifth Committee those aspects of the draft statutes that had budgetary implications, such as the scope of application of the new system and transitional measures. His delegation was willing to envisage concessions with a view to achieving a balanced compromise.

24. **Mr. Onemola** (Nigeria) said that the idea of a staff-funded scheme for legal assistance to staff set out in the report of the Secretary-General on the administration of justice at the United Nations (A/63/314) deserved further consideration. He was certain that with sufficient consideration, the doubts expressed by staff about the viability of the scheme would be dispelled. His delegation was not opposed to limited authority for disciplinary measures being delegated initially to heads of mission or offices away from Headquarters, but it felt strongly that safeguards should be put in place to avoid abuse and that the

suggested training programmes and information campaigns should be conducted. Negotiations between the United Nations and other participating entities on cost-sharing arrangements and options for programme support needed to be concluded swiftly. Judges for the two Tribunals should be appointed exclusively by the General Assembly, which should be able to remove them only on grounds of misconduct or incapacity. Should it be necessary to set up a panel of specialists to examine a request for removal of a judge, it might be more appropriate for the panel's report to be submitted for consideration to an independent body rather than to the concerned Tribunal, as the Secretary-General had proposed.

25. Efforts should be made, first, to establish a new system covering all who had access to the current one; the question of remedies for other categories of personnel should be taken up at a later stage. He reiterated the call for timely conclusion of the Committee's deliberations so that the General Assembly could approve the draft statutes and allow the new system to be brought into operation rapidly.

26. **Mr. Ngay** (Democratic Republic of the Congo) said that in light of the leading role played by the Organization in improving governance worldwide and, where appropriate, restoring the rule of law, its own system of administration of justice could not be allowed to remain slow, cumbersome, costly and contrary to international law and international human rights norms. The time had come to act, in particular by focusing on the draft statutes of the two Tribunals so that the new system could be operational by 1 January 2009. With regard to disciplinary matters, the Secretary-General's proposal to provide initially for a limited delegation of authority to heads of mission and offices away from Headquarters should be taken up swiftly, beginning with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the United Nations Mission in the Sudan (UNMIS), the African Union-United Nations Hybrid Operation in Darfur (UNAMID), the United Nations Mission in Liberia (UNMIL) and the United Nations Operation in Côte d'Ivoire (UNOCI).

27. The informal settlement of disputes should be a linchpin of the new system; staff should have recourse to the Dispute Tribunal only in the event that such a procedure proved unsuccessful, and cases should be brought within six months of the declared failure of mediation efforts. The proposed two-tier jurisdiction, in the form of a Dispute Tribunal and an Appeals Tribunal, would ensure due process and provide safeguards against judicial error. Judges should be appointed by the General Assembly.

28. **Mr. Simonoff** (United States of America) said that his delegation was committed to ensuring the establishment of the new two-tier formal system of administration of justice at the United Nations by 1 January 2009. It was vital that the new system should prove efficient and effective from its inception. Therefore, consideration of certain proposals should be deferred until experience in the operation of the new system was gained; it would be easier to expand it in the future than to contract it. Furthermore, since the system must also be cost-effective, it should be recalled that the Fifth Committee was the Main Committee entrusted with responsibility for the administrative and budgetary aspects of the agenda item. His delegation considered that the Dispute Tribunal should be the sole body to take evidence and would be offering possible alternative approaches to addressing the situation of individuals who were not United Nations staff. However, it was open to new proposals that would bridge the differences in views.

29. **Ms. Chadha** (India) stressed that the staff members of any organization were its most important resource and were entitled to expect an independent, impartial and efficient internal redress mechanism. Her delegation was pleased that steps had been taken to prepare for the establishment of a two-tier, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice and for the strengthening of informal dispute resolution mechanisms, as called for in General Assembly resolution 61/261. It welcomed the establishment of the Internal Justice Council, which would ensure independence, professionalism and accountability in the system of administration of justice, and the creation of a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes to ensure that the same standards and operating guidelines were applied by all ombudsman's offices throughout the United Nations system. The establishment of a Mediation Division to settle disputes in internal, non-litigious proceedings would help promote mutual trust between management and staff and preserve harmony in the Organization. It would be important for

those alternative avenues of dispute settlement to be widely publicized at all duty stations.

30. Despite the progress made by the Ad Hoc Committee on the Administration of Justice at the United Nations, several crucial issues, in particular relating to transitional measures and the scope of the system, must be resolved so that the new system could be put in place by 1 January 2009. The United Nations had a duty to ensure that all members of its workforce had access to justice and that none were left without a legal remedy; however, the Group of 77 and China had indicated that it was willing to look at a number of options and proposals in that regard. Legal assistance should be provided to staff, so the Office of Staff Legal Assistance should be strengthened.

31. **Mr. Mikanagi** (Japan) said that the administration of justice was one of the most important items to be discussed by the Committee. Several important and difficult issues remained, but many of them could be settled in the spirit of compromise. If some issues remained unresolved and had to be referred to the Fifth Committee, the Sixth Committee should clearly lay out the possible options. His delegation was prepared to show maximum flexibility and urged others to do so.

32. **Mr. Charles** (Trinidad and Tobago) said that the existing system of administration of justice was plagued with problems and in dire need of reform. The proposed decentralized system would provide greater access to justice and facilitate speedy, fair and impartial resolution of disputes. Despite the laudable progress made in the Ad Hoc Committee and in informal consultations, finalizing the draft statutes for the two Tribunals would require compromise on all outstanding issues. His delegation was committed to working towards a transparent, impartial and independent system of justice consistent with the rules of international law and the principles of the rule of law and due process.

33. **Mr. Eriksen** (Norway) said that his delegation remained fully committed to the establishment of a new system of administration of justice in conformity with the principles of transparency, impartiality, accessibility and efficiency; those principles should not be compromised by arguments based on cost. It was vital to stand by the pledge, made at the 2005 World Summit, to provide the Organization with adequate resources to fulfil its mandate. A well-run international justice system was a prerequisite for maintaining an efficient and effective Secretariat.

34. The progress made to date was encouraging. In the upcoming working group meetings, the Committee must focus on the outstanding issues. With regard to the personal scope of the formal system, with the target date of 1 January 2009 rapidly approaching, there was merit in taking the necessary decisions to get the system up and running, but the issue should be revisited in the very near future; it was important for associated personnel who were not staff members to have access to an effective remedy for their complaints. A judge should be able to refer the parties to mediation if convinced that there was scope for agreement between the parties. His delegation was of the view that a panel of three judges of first instance should hear certain cases, such as complex claims of discrimination. However, if the Appeals Tribunal was given the power to conduct a full review of cases, including hearing key witnesses, there would be less need for a panel of judges in the Dispute Tribunal. His delegation was confident that the target date could be met and would cooperate fully in that effort.

35. **Ms. Negm** (Egypt) said that the Chairman of the Ad Hoc Committee and the Coordinator of informal consultations had made laudable progress in reconciling differences concerning the draft statutes for the Dispute Tribunal and the Appeals Tribunal, but their speedy finalization was necessary if the 1 January 2009 target established in General Assembly resolutions 61/261 and 62/228 was to be met. She trusted that delegations wished to see justice prevail and to ensure the rule of law so that all United Nations employees could enjoy their legitimate rights as soon as possible. Her delegation was committed to cooperating in the resolution of the many outstanding issues.

36. **Mr. Limon** (Israel) said that his delegation attached great importance to the establishment of a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice no later than January 2009, in accordance with General Assembly resolution 62/228; it especially commended the contribution of the Coordinator for the informal consultations.

37. Among the fundamental issues still to be resolved were the personal scope of the jurisdiction of, and the number of judges in, the Dispute Tribunal; the grounds

for recourse to the Appeals Tribunal; and the transitional measures. Some of those issues were interdependent and should be addressed in an integrated manner. Issues not resolved at the current session should be deferred for consideration in the future when the system was up and running.

38. **Mr. Al-Baker** (Qatar) said that an effective system of administration of justice that was fair, transparent and in conformity with human rights and the rule of law would enhance trust and confidence among the staff, which would be reflected in greater effectiveness in the work of the Organization. In the report of the Secretary-General on the activities of the Ombudsman (A/63/283), the high rates of cases mentioned in paragraphs 32 and 33 (conditions of service) and in paragraph 28 (professional development) showed the need for a clear and transparent system of employment. Paragraphs 21 and 22 of the same report discussed training of staff in the Office of the Ombudsman; although such training was certainly valuable, there was a need to hire qualified staff with prior experience in dispute resolution and mediation.

39. The letter dated 18 July 2008 from the President of the Administrative Tribunal addressed to the President of the General Assembly (A/63/253) raised serious legal issues about transition measures that should be addressed before the new system of administration of justice was adopted. Despite the efforts of the Secretariat, and particularly the Office of the Ombudsman, it was clear from the report of the Secretary-General on the work of the Joint Appeals Board (A/63/211) that the number of appeals was increasing; it seemed that the current system was addressing only effects and not causes. The establishment of the two Tribunals and of the integrated Office of the Ombudsman would help, but there was a need for a more comprehensive system built first on education and guidance and then on admonishment, with disciplinary action as a last resort. His delegation would propose the creation of a section in the Office of the Ombudsman that would offer professional advice and education in order to enlighten staff generally about their rights and duties and to disseminate information about the functions of the Ombudsman through courses and workshops.

40. **Mr. Kuzmin** (Russian Federation) said that his delegation supported reform of the administration of justice at the United Nations that would strengthen the rule of law. The steps already planned would broaden opportunities for informal dispute settlement, replace the current Administrative Tribunal with a two-tiered system and elaborate procedural rules for the new Tribunals; however, his delegation was of the view that the reform should not be limited to those measures. The task before the Committee was to make qualitative improvements in the dispute machinery, a task that could not be accomplished without introducing progressive elements, for example, by broadening the jurisdiction of the Tribunals and the scope of persons with access to them. Of course, any such steps must be weighed carefully in light of their possible long-term consequences for the United Nations.

41. At the current session, the Committee would be primarily concerned with finalizing the draft statutes for the two Tribunals. It was to be hoped that the effort to adhere to the 1 January 2009 time frame would not negatively affect the quality of the decisions taken or prevent consideration of other legal aspects of the new system, such as the modalities for legal assistance. Coordination with the Fifth Committee on matters that fell within the competence of both Committees would be important.

42. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that the Organization was on the verge of creating an independent, professional, transparent and efficient system of internal justice to replace one plagued by incompetence and ineffectiveness. His delegation hoped that the Committee would be able to finalize the drafting of the statutes for the new Tribunals and to decide other pending issues relating to the informal system so that the new system could become operational in 2009.

43. Delegation of authority required clearly defined accountability. An independent, professional, transparent and expeditious system of administration of justice that both protected the rights of staff members and held them and their managers accountable and responsible for their decisions and actions was an integral part of effective human resources management and would pave the way for further reform of the Organization and enhance its productivity.

The meeting rose at 12.10 p.m.